

### **REMARKS/ARGUMENTS**

These Remarks are responsive to the Office Action mailed December 02, 2003 ("Office Action"). Applicants respectfully request reconsideration of the rejections of claims 1-50 for at least the following reasons.

### **STATUS OF THE CLAIMS**

Claims 1-82 are currently pending in the present application. Of those, claims 1-50 stand rejected under 35 U.S.C. § 101 as allegedly being directed to non-statutory subject matter. Claims 51-82 are added by the above amendment.

### **REJECTIONS UNDER 35 U.S.C. § 101**

Claims 1-50 stand rejected under 35 U.S.C. § 101 as allegedly being directed to non-statutory subject matter. Applicant respectfully traverses and requests that the rejections be withdrawn.

The Examiner asserts that claims 1-50 are directed to non-statutory subject matter. Specifically, the Examiner states:

the claims are directed towards an abstract idea. Claims 1-50 represent an abstract idea that does not provide a practical application in the technological arts. There is no post-computer process activity found, the claimed invention performs mathematical calculations with no post solution activity.

Office Action, ¶ 2. Applicant respectfully submits that this is improper for at least the following reasons.

The Examiner has invoked 35 U.S.C. § 101. That section unequivocally states as follows (emphasis added):

**§101 Inventions Patentable**

Whoever invents or discovers *any new and useful process, machine, manufacture*, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

The Court of Appeals For The Federal Circuit has interpreted patentable subject matter to include subject matter that produces useful, concrete and tangible results. *See, e.g., AT&T Corp. v. Excel Communications*, 172 F.3d 1352, 50 U.S.P.Q.2d 1447 (Fed. Cir. 1999) (finding that a patent's claims to a method for enhancing a long-distance telephone call message record by adding a data field with information on the long-distance provider of the call recipient "fall comfortably within the broad scope of patentable subject matter under §101."); *State Street Bank Trust & Co. v. Signature Financial Group, Inc.*, 47 U.S.P.Q.2d 1596 (Fed. Cir. 1998) (stating that mere fact that claimed invention involves inputting numbers, calculating numbers, outputting numbers, and *storing numbers*, would not, in and of itself, render invention non-statutory subject matter, unless its operation does not produce a useful, concrete and tangible result.) (emphasis added).

Applicant respectfully submits that claims 1-50 define inventions that produce "useful, concrete and tangible results" and, thus, satisfy the requirements of 35 U.S.C. § 101. For example, amended claim 1 recites a new and useful process for "processing transactions" by "receiving a radio frequency signal at a point-of-sale device" wherein the received signal further comprises "customer identification data." The process further comprises "transmitting an authorization request from said point-of-sale device to a transaction processing system," "determining, from said customer identification data, a payment processor," "transmitting said authorization request to said payment processor" and "transmitting to said point-of-sale device, said payment processor's response to said authorization request." That such a process produces a useful, concrete and tangible result is unquestionable. For example, and as described in the "Summary of the Invention" (pp. 5-9), one of the useful, concrete and tangible results of one embodiment of the invention is to enable a consumer to transmit an identification signal

(e.g., via a wireless transceiver) to a point-of-sale device and from that identification signal, the consumer is identified and authorized to complete a consumer purchase transaction. Thus, the pending claims set forth useful inventions that have "real world" practical utility (e.g., systems and methods affect payment for transactions) and that provide concrete, reproducible results that are tangible in the physical world (e.g., the consumer is authorized to make a purchase and the merchant receives payment). Furthermore, these results are obtained using the technological arts (e.g., wireless transceivers, networked computers, etc.) in a non-trivial manner. For at least these reasons, Applicant respectfully submits that the rejections under 35 U.S.C. § 101 are improper and requests that they be withdrawn.

Furthermore, Applicant respectfully submits that the asserted rejections of claims 1-50 are not supported by the Examiner's stated reasoning. The Examiner states that claims 1-50 are "directed to an abstract idea" and that there is no "post-computer process activity" and that the "claimed invention performs mathematical calculations with no post solution activity." Office Action, ¶ 2. However, as all of the claims recite tangible structures or features (e.g., receivers, point-of-sale devices, etc.), or computer-based interaction with these tangible structures or features, the Examiner's assertions are not understood. Applicant respectfully submits that the Examiner's statements are incorrect and respectfully request the Examiner to withdraw the rejections or, at the least, provide an explanation of which claims the Examiner believes are merely mathematical calculations or contain no post process activity.

In addition, at least three separate statutory categories of invention are recited in claims 1-50. For example, claims 1-15 are directed to various processes, claims 16-27 are directed to various articles of manufacture (e.g., computer readable media) and claims 28-50 are directed to a system or machine. Each of these categories are explicitly recited in 35 U.S.C. § 101 as being patent eligible subject matter and the Examiner has not provided an explanation how any of the language, in any of the claims, for any of the categories is directed to an abstract idea. Applicant respectfully

requests clarification for the rejections of at least claims 16-27 and 28-50, for it is not understood how the recited computer readable media or system is directed to "an abstract idea" when tangible objects and features are recited.<sup>1</sup>

Finally, Applicant respectfully submits that new claims 51-82 recite patent eligible material as required by 35 U.S.C. § 101 for at least the reasons discussed above in connection with claims 1-50. Applicant respectfully requests that the Examiner indicate the allowability of claims 1-82 in the next communication from the Office.

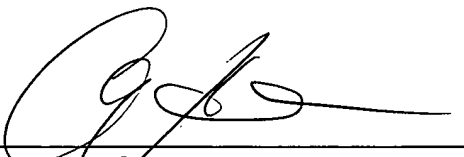
A check in the amount of \$2,042.00 to cover the three-month extension of time fee of \$950.00, excess claims fee for 32 extra claims (\$576.00) and the excess independent claims fee for six (6) extra independent claims (\$516.00) is attached. If there is a shortage or deficiency in fees, the Commissioner is hereby authorized to charge or credit any difference to the undersigned's Deposit Account No. 50-0206.

Respectfully submitted,

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<sup>1</sup> For example, claim 28 recites, among other things, a "customer transceiver," a "merchant transceiver" and a "point of sale processor," all of which are tangible objects.